CIVIL WRIT JURISDICTION CASE No.5657 OF 1990

In the matter of an application an application under Articles 226 and 227 of the Constitution of India.

DAYMANTI DEVI WIFE OF SRI JAGESHWAR DAS, R/O VILLAGE DAPARKHA, P.O.TRIBENIGANJ, DISTT- SHARSA---- PETITIONER

Versus

1. **THE STATE OF BIHAR**
2. **THE BIHAR STATE BOARD OF RELIGIOUSTRUST VIDYAPATRI MARG-PATNA**
3. **THE SPECIAL OFFICER,BIHAR STATE BOARD OR RELIGIOUS TRUSTS, VIDYAPATI MARG, PATNA**
4. **THE CIRCLE OFFICER,P.O.& PS. TRIVENIGANJ DISTT- SAHARSA--------- Respondents**

For The Petitioner : Mr.NARESH KR MALHOTRA,&
Mr. BINOD KR.SINHA-2, ADVOCATES

For The Respondents :Mr. R.A.SINGH SC.II

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A. K.Tripathi,J Petitioner Daymanti Devi claims herself to be the wife-cum-cheli of one Jageshwar Das. She is aggrieved by two impugned orders dated 18.5.1990 contained in annexure-5 as well as the annexure 6 dated 17.7.1990. By virtue of annexure-5 the Circle Officer of Tribeniganj, District –Saharsa has been appointed to look after the affairs of the trust what is known as Dariyapanthi Math. Annexure-6 is the scheme in terms of which the affairs of the trust are to be run.

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When the writ application was filed vide order dated 20.9.1990 a Bench of this Court was pleased to stay the operation of both the impugned orders, namely, annexures 5 and 6. The order of stay thereafter continues with certain rider which was imposed by yet another order dated 6.9.1991. As the writ application was admitted thereafter, it is being taken up for final disposal only now.

The basic assertion of the petitioner is that the property of

the Math in question was a self acquired property by one Jageshwar Das and the present petitioner is vitally interested in the affairs of the trust and the property since she is wife-cum- cheli of said Jageshwar Das. Way back in 1960 from the record available with the petitioner some kind of enquiry was held and notices were issued to Jageshwar Das with regard to the status of the trust and its nature. But it seems that nothing substantial came out from the said exercise till the two impugned orders come to be passed in the year, 1990. The background to passing of the orders is based on some complaints having been made at the local level as also the fact that Jageshwar Das was missing from the year 1987 and there was nobody to take care of the affairs of the trust.

Learned counsel appearing on behalf of the petitioner submits that since it is a private trust and there is nothing on record to show that it is a public trust on which the respondents could exercise authority, more so when no adjudication of the kind as envisaged under section 43 of the Bihar Hindu Religious Trust Act, 1950 was carried out. The entire exercise done by the authority is per se illegal and misplaced. It is mandatory requirement of law and only then the competent authority declares a trust to be a public trust, the respondents would not be empowered to exercise authority in terms of the Act.

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When the stay order was passed by the Court at the time of admission of the case, a petition for vacating the stay was filed on behalf of the respondents where they tried to prevail upon the Court to vacate the stay order in question. In this regard they have also tried to bring some document in support of their claim that the trust in question is a public trust and has

been treated to be such, looking at the history of the trust. They even made a statement in the counter affidavit that this is a public trust and duly registered but the statement has not been supported by any authentic or unimpeachable document in this regard. After this the issue remained open and the Court in its wisdom without vacating the order of stay imposed certain conditions upon the petitioner vide order dated 6.9. 1991.

The writ application has remained pending for many a years but the respondents have not bothered to file any supplementary affidavit or bring any additional material on record to enlighten the Court on the stand they have taken initially when the dispute arose. Learned counsel for the petitioner therefore reiterates his position that a kind of adjudication would be required under section 43 of the Trust Act and in absence of a declaration the respondents cannot be permitted to act in the manner in which they have done in the present case. In this regard reliance has been placed on two decisions of the High Court rendered in the case of Pavitra Kuer Thakur Ram Jayawal & ors vrs. The State of Bihar reported in 2002 (4) PLJR 578 as well as the decision rendered in the case of Bishwa Nath Sah & Ors vrs. The State of Bihar & Ors. reported in 2003(2) PLJR 743.

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The submission of learned counsel for the petitioner seems to be correct so far as the proposition of law is concerned. There has to be a declaration with regard to the status and nature of the trust to be of the public kind before the Bihar Religious Trust and can exercise due authority under the Act. If there is no declaration then they have no right to deal or delve into the affairs of a private trust or the body. If the law lays down on the procedure to be followed then the authority has no escape from the same.

Since there is nothing on record to show that the requirement of section 43 of the Trust Act has been made or carried out, the Court has no option but to quash the two impugned orders.

This writ application is allowed. However, there shall be no order as to cost.

Patna High Court, Patna. **(Ajay Kumar Tr ipathi,J.)**
Dated the 10th November,2008
NAFR/RPS/Sr.Secy.

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